

In the Matter of Proposed)
Rule 4 CSR 240-3.535) Case No. AX-2001-654

Southwestern Bell Telephone Company¹ respectfully submits the following
Comments to the Missouri Public Service Commission opposing proposed rule 4 CSR
240-3.535:

1. Proposed rule 4 CSR 240-3.535 appears intended as a restatement of existing rule 4 CSR 240-2.060(12), which sets out the requirements for an application for authority to acquire the stock of a public utility. This restatement appears to be part of the Commission's rule restructuring project in which it has proposed to create a new Chapter 3 to house all utility filing and reporting requirements.

2. But in addition to simply moving the existing rule from Chapter 2 to Chapter 3, proposed rule 4 CSR 240-3.535 also contains a substantive change. The proposed rule now purports to specifically exempt Competitive Telecommunications Companies from the obligations of this rule. The proposed new rule states:

PURPOSE: *Applications to the commission for the authority to acquire the stock of a public utility must meet the requirements set forth in this rule. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).*

¹ Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this pleading as “Southwestern Bell” or “SWBT.”

(1) Competitive telecommunications companies are exempt from the provisions of this rule; however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, and the tariff under which the service will be provided.

(2) In addition to the requirements of 4 CSR 240-2.060 (1), applications for authority to acquire the stock of a public utility shall include:

(A) A statement of the offer to purchase stock of the public utility or a copy of any agreement entered with shareholders to purchase stock;

(B) A certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock;

(C) Reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.

(3) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

The prior rule, 4 CSR 240-2.060(12), did not specifically exempt Competitive Telecommunications Companies from the provisions of the rule.

3. While Southwestern Bell supports the Commission's general restructuring of its rules and moving this rule from Chapter 2 to the newly created Chapter 3, it opposes substantively changing this rule to specifically exempt Competitive Telecommunications Companies from its provisions.

4. Southwestern Bell understood that the Commission's purpose in restructuring its rules was purely administrative: moving the filing and reporting requirements (that are currently dispersed throughout the Commission's rules) into the newly created Chapter 3 so that the requirements applicable to each public utility could be easily located in one place. Southwestern Bell understood that any substantive change

to the rules would be proposed in a later rulemaking. Adding a specific exemption where one was not stated before, however, is a substantive change and goes beyond a mere administrative restructuring.

5. From a substantive perspective, is inappropriate to exempt only Competitive Telecommunications Companies from the application of the rule. Under the statute from which this rule arises, all telecommunications companies are exempt from the requirement of obtaining the Commission's consent to purchase or acquire more than ten percent of the total capital stock of another telecommunications company in the state:

Except where stock shall be transferred or held for the purpose of collateral security, no stock domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any telecommunications company may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telecommunications company, or any portion thereof. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired, or to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such telecommunications company, or shall be recognized as effective for any purpose.²


Based on this statutory authority, no justification exists for treating Competitive Telecommunications Companies differently than other telecommunications companies.

² Section 392.300(2) RSMo. 2000.

WHEREFORE, Southwestern Bell respectfully requests that the Commission not adopt Rule 240-3.535 as currently proposed by the Commission. Instead, the Commission should propose a revised rule which merely relocates the existing rule from Chapter 2 to Chapter 3, consistent with the Commission's general rule restructuring project.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List via email on October 16, 2002.



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